

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

DOLORES J. KOHOUT,

Plaintiff,

v

Civil Action No. 3:06CV103

MICHAEL ASTRUE,
COMMISSIONER OF
SOCIAL SECURITY ADMINISTRATION,

Defendant.

**REPORT AND RECOMMENDATION THAT PLAINTIFF'S COMPLAINT BE
DISMISSED WITH PREJUDICE FOR FAILING TO COMPLY
WITH THE LOCAL RULES**

On September 29, 2006, Plaintiff filed her complaint against the Commissioner of Social Security. Commissioner filed his answer and a copy of the administrative record on December 7, 2006. Local Rule of General Procedure 83.12(b) states: "Within thirty days after the defendant has filed an answer and a complete copy of the administrative record, the plaintiff shall file a brief in support of his or her claim(s) for relief. The plaintiff shall serve copies of his or her brief upon the United States Attorney's Office."

The Court entered a notice to Plaintiff regarding the need to file her brief in support of her claim or face possible dismissal of her claim on August 13, 2007 and giving Plaintiff until September 4, 2007 to file her brief in support of her claim. The notice specified that a recommendation would be entered that her complaint would be dismissed for failure to comply with the local rules if she failed to file her brief in support of her claim by September 4, 2007. The clerk sent a copy of the notice to counsel for Plaintiff certified mail, return receipt requested. The notice was received by Plaintiff's counsel August 15, 2007. Plaintiff has not filed her brief.

More than nine (9) months has passed since Plaintiff's brief in support of her claim was due under the local rules. I recommend this action be dismissed with prejudice for failing to file a brief in support of her claim within the time specified in the rules and failing to file a brief in support of her claim after being given a notice that failure to do so by September 4, 2007 would result in a recommendation the action be dismissed.

The Clerk of the Court is directed to mail a copy of this Report and Recommendation to all counsel of record, as applicable, as provided in the Administrative Procedures for Electronic Case Filing in the United States District Court for the Northern District of West Virginia.

Any party who appears pro se and any counsel of record, as applicable, may, within ten (10) days from the date of this Report and Recommendation, file with the Clerk of the Court an original and two (2) copies of the written objections identifying the portions of the Report and Recommendation to which objection is made, and the basis for such objection. Failure to timely file objections to the Report and Recommendation set forth above will result in waiver of the right to appeal from a judgment of this Court based upon such Report and Recommendation.

DATED: September 6, 2007

/s/ James E. Seibert
JAMES E. SEIBERT
UNITED STATES MAGISTRATE JUDGE